

## II. REJECTION UNDER 35 U.S.C. § 103

The Examiner rejects claims 1-4 and 7-18 under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 5,737,407 issued to Graumann (hereinafter "Graumann") in view of U.S. Patent No. 5,311,588 issued to Polcyn et al. (hereinafter "Polcyn"). Applicant respectfully submits that a prima facie case of obviousness has not been met regarding claims 1-4 and 7-18 in light of the remarks set forth herein.

Regarding claim 1, the Office Action explicitly states that Graumann does not specifically disclose the determination of a peak-to-mean likelihood ratio. Rather, it is alleged that the peak-to-mean power ratios described in claim 1 (col. 16, lines 49-62) of Polcyn suggest the claimed peak-to-mean likelihood ratio limitation. Applicant disagrees with the rejection.

It is respectfully asserted that it is impermissible to rely on the language in the claims as support for the teachings of Polcyn. The scope of a patent's claims determines what infringes a patent; it is no measure of what it discloses. In re Benno, 768 F2d 1340, 226 USPQ 683, 686 (Fed.Cir.1985). Thus, it is respectfully requested that the Examiner identify the specific areas in the specification where Polcyn describes the use of a peak-to-mean likelihood ratio.

CONCLUSION



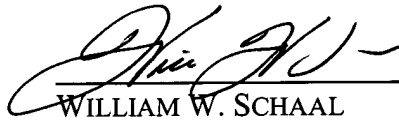
In view of the amendments and remarks made above, it is respectfully submitted that all pending claims are in condition for allowance, and such action is respectfully solicited. It is respectfully requested that the Examiner contact the undersigned attorney in order to facilitate prosecution of the subject application.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZIMMAN LLP

RECEIVED  
JUN 29 2000  
PC 2700 MAIL ROOM


Dated: June 22, 2000

  
WILLIAM W. SCHAAL  
Reg. No. 39,018

CERTIFICATE OF MAILING

12400 Wilshire Boulevard, Seventh Floor  
Los Angeles, California 90025  
(714) 557-3800

*I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231 on: June 22, 2000.*

  
Maria N. Sausedo

06/22/00  
Date